IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JUANITA JOHNSON,	:	CIVIL ACTION
	:	NO. 96-3617
Plaintiff,	:	
	:	
v.	:	
	:	
UNIVERSITY OF PENNSYLVANIA,	:	
	:	
Defendant.	:	

ORDER-MEMORANDUM

AND NOW, on this **25th** day of **June, 1997**, upon consideration of the defendant's motion for summary judgment and supporting memoranda (doc. nos. 7, 8 & 13), and the plaintiff's opposition thereto (doc. no. 9), it is **ORDERED** that the motion is **DENIED** for the reasons that follow.

I. BACKGROUND

1. The plaintiff, Juanita Johnson, worked for the defendant, the Hospital of the University of Pennsylvania ("the Hospital") as a data entry clerk in the Hospital's Obstetrics and Gynecology Billing Office from November 1984 until, at the request of the defendant, she tendered her resignation effective July 1994.

2. In May of 1993, the plaintiff suffered pain in her hand and wrist while at work. According the plaintiff, her pain was a result of performing numerous additional hours of data entry for a special rush project in her office. Subsequently, the

plaintiff was treated for carpal tunnel syndrome, missed three days of work, was placed on light duty for six months, wore a removable cast and received physical therapy.

3. When she returned to full duty, the plaintiff and her employer were instructed by the plaintiff's treating physician that she should take breaks from data entry for five minutes every two hours. She alleges that her supervisor's attitude changed toward her after she returned from light duty.

4. In June of 1994, the plaintiff missed three days of work allegedly due to illness. She claims that she called her supervisor the first two days but on the third day left a message with a co-worker instead of talking directly to her supervisor. When she returned to work the plaintiff was threatened with termination for failure to report her absence to her supervisor. She was instead permitted to tender her resignation with six weeks notice to afford her an opportunity to find another position.

5. The plaintiff claims that her requested resignation was a result of her impairment, record of impairment, or being regarded as having an impairment in violation of the Americans with Disabilities Act. The defendant claims that the plaintiff was requested to resign as a result of progressive discipline after numerous warnings and a suspension for absenteeism.

6. After her resignation the plaintiff applied for several jobs with the defendant. She submitted her resume for several different positions to defendant's Human Resources Representative

Marge Mansfield (who is now married and goes by the name of Marge Delaney).

7. When the plaintiff inquired about the position of Software Support Clerk, she claims that Ms. Mansfield told her that she would not refer the plaintiff for any positions regarding data entry because "that's how you messed up your hand in the first place." Plaintiff's Declaration at ¶ 7. The plaintiff also claims that Ms. Mansfield told her that she should get training in another field. Id. at ¶ 8.

8. The plaintiff alleges that at the time of her application she was then fully capable of performing data entry work. She claims that she was denied consideration for data entry jobs as a result of discrimination based on her impairment, record of impairment or being regarded as having an impairment in violation of the Americans with Disabilities Act. The defendant denies that the plaintiff was not considered for data entry positions.

II. LEGAL STANDARD

9. Summary judgment is appropriate if the moving party can "show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). When ruling on a motion for summary judgment, the Court must view the evidence in the light most favorable to the non-movant. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). The Court must

accept the non-movant's version of the facts as true, and resolve conflicts in the non-movant's favor. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993).

10. The moving party bears the initial burden of demonstrating the absence of genuine issues of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Once the movant has done so, however, the non-moving party cannot rest on its pleadings. See Fed. R. Civ. P. 56(e). Rather, the non-movant must then "make a showing sufficient to establish the existence of every element essential to h[er] case, based on the affidavits or by depositions and admissions on file." Harter v. GAF Corp., 967 F.2d 846, 852 (3d Cir. 1992); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

III. DISCUSSION

11. The Americans with Disabilities Act ("ADA") prohibits discrimination "against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment." 42 U.S.C. §12112(a).

12. As in other discrimination statutes, the plaintiff has "the initial burden of establishing a prima facie case of unlawful discrimination. To do so [s]he had to establish that (1) [s]he belongs to a protected category; (2) [s]he applied for

and was qualified for a job for which the employer was seeking applicants; (3) despite h[er] qualifications, [s]he was rejected; and (4) after h[er] rejection, the position remained open and the employer continued to seek applicants." Olson v. General Electric Astrospace, 101 F.3d 947, 951 (3d Cir. 1996) (citing Sheridan v. E.I. DuPont de Nemours and Co., 100 F.3d 1061 (3d Cir. 1996)(en banc); Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994)).

13. Here, the defendant moves for summary judgment claiming that the plaintiff has not met her burden on the first element. The Hospital claims that the plaintiff has failed to demonstrate that she belongs to the protected category because she is not "a qualified individual with a disability."

14. The ADA defines "disability" as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(2). Major life activities include "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(i), quoted in, Olson, 101 F.3d at 952.

15. An individual's major life activity is substantially limited when he or she is

> (i) Unable to perform a major life activity that the average person in the general population can perform; or
> (ii) Significantly restricted as to the condition, manner or duration under which an individual can

> perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

29 C.F.R. § 1630.2(j)(1), quoted in, Olson, 101 F.3d at 152.

16. "In determining if a person is affected by a disability that 'substantially limits' a 'major life activity' we must consider several factors including:

> '(i) The nature and severity of the impairment;
> (ii) The duration or expected duration of the impairment; and
> (iii) The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.'"

Olson, 101 F.3d at 952 (quoting 29 C.F.R. § 1630.2(j)(2)).

17. An "inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working," but an impairment which "significantly restrict[s] . . . the ability to perform either a class of jobs or a broad range of jobs in various classes" would constitute a substantial limitation. 29 C.F.R. § 1630.2(j)(3)(i), quoted in, Olson, 101 F.3d at 952.

18. Under certain circumstances carpal tunnel syndrome may qualify as a disability under the ADA. See, e.g., Fink v. Kitzman, 881 F. Supp. 1347, 1377 (N.D. Iowa 1995) ("The court has no doubt that there are people sufficiently impaired by carpal tunnel syndrome to qualify as 'disabled' persons under the ADA . . . ."). Cf. Farrow v. Bell Atlantic--PA, Civ. A. No. 95-1323, 1996 WL 316798, at *3 n.3 (W.D. Pa. Apr. 26, 1996) ("While defendant challenges the plaintiff's position that her affliction

with carpel tunnel syndrome qualifies as a disability under the ADA, this Court finds that it is not necessary to determine whether plaintiff's particular problems rise to the level of a disability under the ADA. Therefore, for purposes of resolving this motion, this Court will assume that plaintiff was a disabled person within the meaning of the ADA.").

19. However, whether or not the plaintiff's carpal tunnel syndrome is an impairment that rises to the level of a disability under the ADA is not the sole question when considering the defendant's summary judgment motion. The plaintiff does not lose if she cannot show that she actually has a disability. The plaintiff may also defeat the summary judgment motion if she can show that she either has a record of an impairment that rises to the level of disability or that she was considered as having an impairment which rises to the level of a disability. 42 U.S.C. § 12102(2). "Our analysis of th[e latter] claim focuses not on [the plaintiff] and h[er] actual abilities, but rather on the reactions and perceptions of the persons interacting or working with h[er]." Kelly v. Drexel University, 94 F.3d 102, 109 (3d Cir. 1996).

20. Here, the plaintiff has alleged that she was discriminated against in at least two ways. First, she alleges that her supervisor, Robert Macaluso, treated her differently after she returned from the light duty position to which she was assigned for the six months following her injury. She claims that Mr. Macaluso harassed her about her work and threatened to

terminate her for failing to speak to him directly when she called in sick in June 1994. The plaintiff alleges that other workers who called in sick and did not speak to the supervisor were not threatened with termination.

21. Second, the plaintiff alleges that after the she resigned at the defendant's request she applied for other positions with the defendant and was told by the defendant's staffing specialist, Ms. Mansfield, that she would not refer the plaintiff for any positions regarding data entry because "that's how you messed up your hand in the first place." Plaintiff's Declaration at ¶ 7.[1] The defendant denies that Ms. Mansfield or any other of defendant's employees said this to the plaintiff.

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1. The defendant argues that Ms. Mansfield's statement is not admissible because Ms. Mansfield was merely a low level employee and not a decisionmaker regarding the plaintiff's employment. Defendant's Reply Brief at 4-6 (citing and quoting Armbruster v. Unisys Corp., 32 F.3d 768, 778-79 (3d Cir. 1994)). The defendant, however, cites to nothing in the record that indicates that Ms. Mansfield was not a decisionmaker in the hiring process for the positions the plaintiff applied for. The plaintiff, on the other hand, has directed the Court to Ms. Mansfield's deposition in which she says her duties as a staffing specialist included reviewing applications and "refer[ring] qualified candidates for vacant positions." Plaintiff's Response to Defendant's Motion for Summary Judgment at 4-5 (citing and quoting Deposition of Margie Delaney (nee Mansfield) at 10-11). The record also indicates that Ms. Mansfield reviewed the applications for the particular positions for which the plaintiff submitted her resume. Deposition of Margie Delaney (nee Mansfield) at 27. The plaintiff's evidence indicates that Ms. Mansfield had a gatekeeper role in the decisionmaking process and could thus effect the selection of candidates for the particular positions the plaintiff was applying. The Court finds that the defendant has not demonstrated that Ms. Mansfield's statements would be inadmissible under the teachings of Armbruster v. Unisys Corp, 32 F.3d at 778-79, and has, therefore, failed to show the absence of a genuine issue of fact.

The issue of whether this statement was made is one of credibility for the jury to determine.

22. The plaintiff's allegation that Ms. Mansfield made the above statement is sufficient to create a genuine issue of material fact. If it is found that Ms. Mansfield indeed made such a statement, a reasonable fact-finder could infer from that alone that the defendant regarded the plaintiff as having a disabling impairment. "[B]eing 'regarded as having such an impairment' means:

> '(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation;
> (2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
> (3) Has none of the impairments defined in paragraphs (h)(1) or (2) of this section but is treated by a covered entity as having a substantially limiting impairment.'

Thus, [the plaintiff] would be disabled within in the meaning of the ADA if [the defendant] regarded [the plaintiff] as having a disabling impairment." Olson, 101 F.3d at 953-54 (quoting 29 C.F.R. § 1630.2(l)(1)-(3)).

23. The Court finds that if the defendant precluded the plaintiff from consideration for data entry positions because of her carpal tunnel syndrome, plaintiff was thus restricted from performing a "class of jobs." 29 C.F.R. § 1630.2(j)(3)(i). Such a restriction would then constitute a substantial limitation in the major life activity of working. Id. Therefore, the

plaintiff's impairment would be considered a disability for purposes of the ADA. 42 U.S.C. § 12102(2).

24. In this case Ms. Mansfield's gatekeeping role of reviewing applications is analogous to the role of the interviewer in a recent Third Circuit decision. Olson, 101 F.3d 947. In Olson, the Third Circuit reversed the district court's grant of summary judgment in favor of the defendant, concluding that, while the interviewer was only an intermediary who then made a recommendation to the final decisionmaker, "it is clear that a reasonable fact-finder could infer that [the interviewer] perceived [the plaintiff] to be disabled. One could reasonably conclude that this affected the recommendation [the interviewer] made to [the final decisionmaker] . . . ." Id. at 954-55.

IV. CONCLUSION

25. The plaintiff has produced evidence that raises an inference that the defendant regarded her as being disabled within the meaning of the ADA. While the defendant disputes the evidence, it nevertheless raises a genuine issue of material fact for the jury. Therefore, summary judgment is inappropriate in this case.

AND SO IT IS ORDERED

EDUARDO C. ROBRENO, J.